



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: November 22, 2006 REPORT NO: 06-149

ATTENTION: Council President and City Council
City Council Agenda of November 28, 2006

SUBJECT: Regulation of Large Retail Establishments and Prohibition of Superstores

REFERENCE: Mayor's Report 06-124 (with 3 Attachments)
Manager's Report 05-136 (with 12 Attachments)
Planning Commission Memorandum, dated December 9, 2004;
Planning Commission Report PC-04-138;
Planning Commission Memorandum, dated May 7, 2004;
Planning Commission Report PC-04-014;
Manager's Report 03-151; Manager's Report 01-126;
Manager's Report 00-205; Planning Commission Report P-96-180;
Planning Commission Report P-96-080

REQUESTED ACTION: Adopt LARGE RETAIL ORDINANCE (VERSION B)
(O-2007-29B)

MAYOR'S RECOMMENDATION:

Adopt LARGE RETAIL ORDINANCE (VERSION B) which requires discretionary permit review at 50,000 and 100,000 square foot thresholds, and new design and landscape standards for all large retail establishments. Regulate "Superstores" through the same discretionary permit processes as other large retail establishments to allow for consideration of impacts based on specifics of the proposal. Do not adopt the ORDINANCE PROHIBITING SUPERSTORES (O-2007-41).

ENVIRONMENTAL STATEMENT:

Staff analyzed the potential environmental impact of the proposed ordinances and concluded that this activity is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA guidelines Section 15060(C)(3). This determination is predicated on Section 15004 of the Guidelines which provides direction to lead agencies on the appropriate timing for the environmental review. Construction activities related to the proposed regulations will require further review under the provisions of CEQA.

SUMMARY:

The City Council is being presented with three draft ordinances, which have each been discussed in detail within the policy discussion section of the report.

- **LARGE RETAIL ORDINANCE (VERSION A)** was drafted pursuant to the City Council's motion on September 18, 2006. The draft ordinance incorporates Items 3, 4 and 6 of the former City Manager's Report (05-136). Version A also contains a modification by the City Attorney that attempts to address a potential loophole in how the regulations would apply to previously conforming establishments.
- **LARGE RETAIL ORDINANCE (VERSION B)** is the Mayor's recommendation, in consideration of the City Council's motion on September 18, 2006. The draft ordinance incorporates Items 3, 4 and 6 of the former City Manager's Report (05-136) and includes modifications that staff feels better meets the Mayor's and Council's intent.
- **ORDINANCE PROHIBITING SUPERSTORES** was drafted pursuant to City Council direction on September 18, 2006.

Background

On July 23, 2003, the City Council's Land Use & Housing Committee (LU&H) directed the Planning Department to develop an ordinance that would regulate all large retail development. LU&H also directed staff to analyze an ordinance proposal distributed at that committee meeting by the Joint Labor Management Committee (JLMC), referred to as the "SKU Ordinance." The SKU Ordinance would prohibit the establishment of large retail stores where: (1) the facility is larger than 90,000 square feet; (2) contains more than 30,000 SKU's (Stock Keeping Units); and (3) more than 10% of its revenue comes from non-taxable items (e.g. grocery). This type of store is commonly referred to as a "Supercenter" or "Superstore".

Staff presented draft regulations to a variety of stakeholder groups, as well as to the groups involved in the formal code amendment process including the Technical Advisory Committee, Code Monitoring Team, Community Planners Committee, and Planning Commission. TAC, CMT, CPC, and PC all recommended against the SKU ordinance proposal. Except for TAC, the groups generally agreed that additional design and landscape standards should be required, and that a discretionary permit was appropriate.

Multiple Planning Commission workshops and meetings were held to discuss regulations for large retail establishments, during which the Planning Commission contemplated adding an economic impact finding to the discretionary review process. Staff was directed to prepare a comprehensive fiscal and economic impact analysis of the largest retail establishments including "Supercenters" to assist PC in their consideration. The City's Economic Development Division completed that analysis entitled "Fiscal and Economic Impacts of Large Retail Establishments" (see Attachment 4 to Report 05-136.)

Subsequently, the Planning Commission determined that regulation of large retail establishments was a design issue (not a use issue) and should be regulated with a development permit (NDP/SDP) as opposed to a use permit (NUP/CUP). Their determination was based on the understanding that the Economic Prosperity Element of the General Plan would include a provision to require a market impact analysis for discretionary permit requests to construct a retail establishment of 100,000 square feet or greater gross floor area.

Staff developed a draft strikeout ordinance to regulate the development of large retail establishments that was presented to the stakeholders and advisory groups for review. The following are Items 1-6 (referenced in the PC, LU&H and City Council motions):

- (1) No building size limit in areas designated for Regional Commercial uses.*
- (2) Limit the size of large retail establishments to 150,000 square feet except in the CR (Commercial-Regional) zones and the Centre City Planned District Ordinance (CCPDO).*
- (3) Establish a Process 2 Neighborhood Development Permit (NDP) at 50,000 square feet of building size in the Community Commercial (CC) zones, Regional Commercial (CR) zones, Light Industrial (IL-2-1, IL-3-1) zones and planned districts except CCPDO.*
- (4) Establish a Process 4 Site Development Permit (SDP) at 100,000 square feet of building size in the CC zones and planned districts.*
- (5) Include incentive based requirements.*
- (6) Establish additional design and landscape regulations in the CC zones, CR zones, IL-2-1 and IL-3-1 zones, and planned districts.*

On December 16, 2004, the Planning Commission recommended approval of the staff's recommendation except for Item 2 (150,000 sq ft size cap). The Planning Commission also recommended inclusion of design requirements such as structured parking, eating areas and green building requirements for structures over 150,000 square feet, and that the economic impact report not be included in the ordinance.

The draft ordinance subsequently presented to LU&H was not revised to reflect the Planning Commission recommendation. On June 29, 2005, the LU&H Committee voted to recommend approval of Items 3, 4, and 6 of the staff recommendation (development permit requirements and design/landscape standards) and to refer the remaining elements (Items 1, 2, and 5 relating to size limitations and design incentives) to the Council without recommendation.

City Council Direction

On September 18, 2006, the City Council was presented a version of the former City Manager's proposal. The Council discussed regulation of large retail establishments

including new design and landscape requirements and discretionary permits at 50,000 and 100,000 square foot thresholds (Process 2 or Process 4) to allow for a comprehensive analysis of potential impacts and increased public input. Regulation of superstores was also discussed, but the Council was split in their direction for how to regulate them, which lead to two separate motions. The first motion, approved unanimously, directed the Office of the City Attorney, with the cooperation of the Mayor's staff and the Office of the Independent Budget Analyst to prepare an ordinance regulating large retail establishments in accordance with the Mayor's recommendations in Report 06-124.

However, some critical policy issues were not addressed by the City Council motion (see policy discussion below), and as a result, two versions of the large retail ordinance were drafted to reflect the Council motion:

- Version A- reflects the Council motion, with an additional modification to previously conforming, that appears to have unintended consequences
- Version B (recommended by the Mayor)- addresses Council intent and eliminates the unintended consequences

The second motion, passed on a 5-3 vote, similarly directed Office of the City Attorney, with the cooperation of the Mayor's staff and the Office of the Independent Budget Analyst to prepare an ordinance similar to the SKU Ordinance that would preclude the construction of Superstores within the City. As a result, the ORDINANCE PROHIBITING SUPERSTORES was drafted to prohibit the construction of a retail store where: (1) the store is larger than 90,000 square feet of gross floor area; and (2) more than 10% of gross floor area is used to sell merchandise not subject to sales tax. This ordinance includes an exception for membership stores that sell products in bulk quantities.

A general prohibition on superstores is not recommended by the Mayor. Version B (Mayor's recommendation) requires a development permit for any large retail establishment above 50,000 square feet, and creates additional design and landscape standards. Version B will provide adequate protection for the public health and safety, especially when combined with the required market impact analysis proposed for the Economic Prosperity Element. The associated studies required during the discretionary permit and CEQA review processes would provide sufficient information for fully informed decisions regarding the appropriate locations for large retail establishments including Superstores.

Policy Discussion

Drafting of the Large Retail Ordinance pursuant to the Council motion was complicated by the fact that the September 18, 2006, Council motion reflected an outdated ordinance. No Council direction was requested on significant policy issues related to implementation of the regulations. Consequently, two versions of the large retail ordinance were prepared. The following is a comparative analysis of the two versions as they relate to some outstanding policy issues for Council consideration:

Where should the large retail establishment regulations apply?

Previous discussion has been related to requiring a discretionary permit at 50,000 and 100,000 square foot thresholds for large retail development to allow for public participation and evaluation for consistency with required permit findings.

Version A: Requires a Process 2 Neighborhood Development Permit at 50,000 square feet or greater in the CC, CR, IL-2-1, IL-3-1 zones, and in Planned Districts (except CCPDO), and a Process 4 Site Development Permit at 100,000 square feet or greater in the CC zones and planned districts. Since these are not the only zones where a large retail establishment may locate, it may encourage large retailers to locate in the least appropriate areas in order to avoid the discretionary permit requirement. For example, the Community Commercial zone which is intended for retail uses is actually the most restrictive under this ordinance version (Process 4 SDP), and as a result, the City could see retailers locate in other zones such as the Light Industrial zones with lesser permit requirements. In addition, Version A would cap store size at 49,999 square feet in the CN, CO, CV, IP, IH, IS and the IL-1-1 base zones, instead of relying on the limitations of the base zone consistent with the existing code.

Version B: Requires a Process 2 Neighborhood Development Permit at 50,000 square feet and a Process 4 Site Development Permit at 100,000 square feet in all commercial and industrial base zones. Size of a retail establishment is limited by the base zone requirements. The discretionary permit process would be used to determine whether the location is appropriate or not.

How should the large retail establishment regulations apply to existing development?

In previous hearings large retailers were concerned about how the proposed regulations would impact future requests for minor improvements to their existing businesses. Under the former City Manager's proposal, previously conforming large retail development would not be subject to the discretionary process (Process 1 Building Permit), but would be subject to the landscape and design regulations.

Version A: The new design and landscape regulations would apply to all previously conforming large retail development through a Process 1 Building Permit, except that a Process 4 Site Development Permit would be required for any development 100,000 square feet or greater. The discretionary permit requirement is a modification added by the Attorney to address a potential loophole. However, this modification would negatively impact existing retailers, and would provide a disincentive to existing retailers to make minor improvements to their properties. Under Version A, an existing retail establishment 100,000 square feet or greater would be still be subject to a Process 4 SDP for any type of minor improvement, which seems to be a non-value added processing cost to require of an existing retail establishment.

Version B: The new design and landscape regulations would apply to all previously conforming large retail development through a Process 1 Building Permit, except that a

Process 4 Site Development Permit would be required for any development 100,000 square feet or greater that would also increase average daily trips. In comparison to Version A, this would allow for existing establishments to make improvements through an administrative process except where associated with a potential traffic impact. This proposal would be consistent with previous testimony during the public hearing process. The requirement for a Process 4 SDP in this case would appropriately subject proposals with a potential to negatively impact a community to the discretionary permit process.

Should deviations be permitted, consistent with the existing code, where necessary for a better project?

The Land Development Code generally allows deviations to development regulations through the processing of a discretionary Process 4 Planned Development Permit (PDP), when “the project will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.”

Version A: Deviations from Land Development Code or large retail establishment development standards would not be permitted. The provision in Section 143.0410(a)(3)(H) prohibiting deviations for large retail establishments was included in previous draft ordinances, but was not identified or analyzed in previous staff reports and was not presented to the Council.

Version B: An applicant may request a deviation from any development standard applicable to large retail establishments through a Process 4 PDP consistent with the LDC. As limited by the existing code, deviations for a large retail establishment may not be requested from the coastal height limit, floor area ratio, environmentally sensitive lands, or historical resource regulations (Section 143.0410(a)(3)), or to allow the use in a zone where it would not otherwise be allowed (Section 143.0403).

PREVIOUS COUNCIL AND/OR COMMITTEE ACTIONS:

Technical Advisory Committee: On September 8, 2004, TAC made a motion to maintain existing regulations (vote 5-0-2). A second motion recommended that if new regulations are added, they should be incentive based (vote 6-0-1).

Code Monitoring Team: On September 8, 2004, CMT voted 7-0 to oppose any re-leasing requirements and to support the staff recommendation as modified to eliminate the building size limitation of 150,000 sq ft and to require a Process 1 at 50,000-99,999 sq ft building size (instead of Process 2).

Community Planners Committee: On September 28, 2004, CPC voted 21-2-0 to support staff’s recommendation with modifications: (1) eliminate the 150,000 sq ft building size limitation, (2) establish discretionary review (SDP Process 4) at 75,000 sq ft, and (3) require discretionary review (NDP Process 2) at 50,000 sq ft.

Planning Commission: On December 16, 2004, the Planning Commission voted 6-0 to recommend approval of staff's recommendation except for Item 2 (150,000 sq ft size cap). The Planning Commission also recommended inclusion of design requirements such as structured parking, eating areas and green building requirements for structures over 150,000 square feet and that the economic impact report not be included in the ordinance.

Land Use & Housing (LU&H) Committee: On June 29, 2005, LU&H voted to recommend approval of Items 3, 4, and 6 of CMR 05-136 (development permit requirements and design/landscape standards) and to refer the remaining elements of CMR 05-136 (Items 1, 2, and 5 relating to size limitations and incentives) and SKU Ordinance to the Council without recommendation. Additionally, the Committee referred the SKU Ordinance to the City Attorney and asked for a legal review of that proposed Ordinance to be prepared prior to City Council consideration of this issue. The legality of the SKU Ordinance was thereafter addressed in Closed Session.

City Council: On September 18, 2006 the City Council approved two motions. The first motion, approved unanimously, directed the Office of the City Attorney, with the cooperation of the Mayor's staff and the Office of the Independent Budget Analyst to prepare an ordinance regulating large retail establishments in accordance with the Mayor's recommendations in Report to Council No. 06-124.

The second motion, passed on a 5-3 vote, directed Office of the City Attorney, with the cooperation of the Mayor's staff and the Office of the Independent Budget Analyst to prepare an ordinance similar to the SKU Ordinance which would preclude the construction of Superstores within the City, except for membership stores which exceed these thresholds but which sell products in bulk quantities.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

During the last ten years there has been considerable public discussion and debate regarding both large retail establishments and Superstores. During the two-year period from 2003-2005, these issues elicited public testimony from a wide range of interest groups at three Planning Commission workshops, two Planning Commission meetings, two LU&H public hearings, and meetings with CPC, TAC, and CMT.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The business community itself is divided on this issue. Small businesses, chain grocery stores, and their trade organizations are in favor of placing restrictions on Superstores. This part of the business community has been represented by the Business Improvement District (BID) Council, the Small Business Advisory Board (SBAB), and the Joint Labor Management Committee (JLMC), which represents the chain grocery stores and the United Food & Commercial Workers Union (UFCW). The Center for Policy Initiatives (CPI), a non-profit public interest research organization which is loosely affiliated with local labor organizations including the UFCW, also expressed support for restrictions on

Superstores. Small businesses in particular, have emphasized that many public investments and policies have favored large retailers, while making matters more difficult for small retailers.

Several large corporate retailers have expressed opposition to any size or content restrictions. These retailers are joined by the San Diego Regional Chamber of Commerce, San Diego County Building Industry Association (BIA), and the National Association of Industrial and Office Properties (NAIOP) who generally oppose new restrictions on development.

Additional enforcement costs and legal expenses if a challenge to the proposed regulations occurs are potential general fund costs associated with the superstore prohibition. The superstore prohibition will be difficult to apply and enforce since large retail establishments and superstores look exactly the same on a set of plans and as physically constructed in the field. Superstores are only differentiated by merchandise content within the store.

FISCAL STATEMENT:

The Large Retail Ordinance would not likely have any fiscal impact (positive or negative) on the City. The fiscal impact of large retail establishments is almost entirely dependent on the location of these stores. The fiscal impact of one or more Superstores coming into San Diego is uncertain. Positive fiscal impacts (net new revenues) could be realized if the proposed Superstore were to be located in San Diego, close to City limits and away from small locally-owned retailers which are predominantly congregated in the central part of the City, especially in adopted Redevelopment Areas, Enterprise Zones, and Business Improvement Districts (BID's). Conversely, Superstores locating just outside the boundaries of the City would result in a negative fiscal impact. A provision to require large retail applicants (for stores larger than 120,000 square feet) to provide a market impact analysis during the discretionary process would provide decision-makers with site-specific fiscal impact information. This requirement is currently proposed for inclusion in the Draft General Plan's Economic Prosperity Element.

CONCLUSION:

The Mayor recommends Large Retail Ordinance (Version B) to the City Council for adoption. It is staff's belief that this draft ordinance best meets the intent of both Mayor and Council. The Mayor does not recommend adoption of the Ordinance Prohibiting Superstores.

The Mayor's recommendation would provide a discretionary review process, implement enhanced design standards, and give decision makers the opportunity to consider positive and negative impacts of superstore proposals on a case by case basis. Specifically, the Mayor's proposal:

- Will allow San Diego communities and all interest groups and stakeholders to give input and participate in the approval process.
- Will require builders of all large retail establishments to construct stores with enhanced features and more landscaping.
- Allows the market to be a factor in determining whether the size, location and content of retail stores are feasible subject to zoning ordinances.
- Will allow impacts of any proposed large retail development to be studied during the discretionary review process.

Respectfully submitted,

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WARING/ESCOBAR-ECK/AJL

Attachments: 1. [LARGE RETAIL ORDINANCE VERSION A \(O-2007-29A\)](#)
 2. [LARGE RETAIL ORDINANCE VERSION B \(O-2007-29B\)](#)
 3. [ORDINANCE PROHIBITING SUPERCENTERS \(O-2007-41\)](#)
 4. [Report to Council 06-124 \(with 3 Attachments\)](#)